Golden Approach Sdn Bhd v Pengarah Tanah dan Galian

HIGH COURT (IPOH) — ORIGINATING MOTION NO 21–38 OF 1999
CLEMENT SKINNER J
15 NOVEMBER 2000

Land Law *— Subdivision — Surrender of land — Whether appellant a 'person aggrieved' by the decision of the Director of Land and Mines — Whether power of the attorney executed in favour of the appellant effective in respect of sub-divisional lots of land*

The appellant entered into an agreement to purchase two parcels of lands from a company called Ulu Behrang Estate Sdn Bhd ('Ulu Behrang'). The appellant intended to develop the said lands by subdividing and selling off individual lots to interested purchasers. Ulu Behrang duly executed a power of attorney in favour of the appellant in respect of the said lands in which the appellant was authorized and empowered to, inter alia, apply or submit to the relevant government authorities any conversion, layout building or subdivision of the lands. The appellant was also authorized to sign and execute any documents or instruments for the registration of the transfer or assignment of any part or subdivided portions of the said lands to its purchasers. To achieve the appellant's objective of subdividing the lands into lots, the Director of Lands and Mines ('the Director') proposed that the appellant surrendered the lands to the state authority according to the provisions of s 197 of the National land Code 1965 ('the NLC') so that the lands revert to the state authority as state land, whereafter, in the exercise of powers vested in it under s 42 of the NLC, the state authority would re-alienate the lands to Ulu Behrang. The Director's proposal was contained in a letter dated 23 January 1996. The lands were re-alienated back to Ulu Behrang in 1,146 sub-divisional lots each with their own issue document of title. Subsequently the Director informed the appellant that as the lands had been surrendered to the state authority, the power of attorney granted to the appellant ceased to remain effective and the appellant was required to furnish a new power of attorney executed by Ulu Behrang authorizing the appellant to deal with the 1,146 sub-divisional lots. It was the Director's case that the power of attorney granted to the appellant was ineffective in respect of the 1,146 sub-divisional lots because the procedure adopted to subdivide the lands was by way of a surrender under s 197 of the NLC and thereafter alienation back to Ulu Behrang under s 42 of the NLC; whereas, if the appellant had adopted the procedure under ss 204A to 204H of the NLC, the power of attorney would still be effective. The appellant appealed against the Director's decision.

Held, allowing the appeal:

(1) The act of the Director in refusing to recognize the power of attorney and requiring the appellant to furnish him with a fresh

power of attorney amounted to a decision. It was a decision upon which an appeal would lie. The court was also satisfied that the appellant was a 'person aggrieved' by that decision (see p 417F–G).

(2) The surrender of the lands may have given rise to question about the effectiveness of the power of attorney vis a vis the sub-divisional lots but the power of attorney did not 'cease to exist' as alleged and the fact that the lands had been surrendered did not affect the position of the appellant as a person aggrieved by the decision of the Director because the appellant did not seek to rely upon the power of attorney to claim an interest in the lands but asserted that the power of attorney can still be sued in respect of the sub-divisional lots (see pp 417H–418A).

(3) Generally, on a surrender of land under s 197 of the NLC, it reverts to state land and may be disposed off at will by the state authority. However, each case must be decided according to its own particular facts. In this case, the Director had offered to re-alienate the lands back to Ulu Behrang on the terms and conditions set out in his letter dated 23 January 1996 and such offer had been accepted. Therefore, on their surrender, although the state lands vested in the state authority as state land, they were not available for disposal at will but had to be treated as being approved for re-alienation in sub-divisional lots: a position no different than a surrender under ss 204B and 204G of the NLC. The difference in a surrender under ss 197 and 204G(2)of the NLC was of no real significance in this case (see pp 420C–E, 421A).

(4) The provisions for issuance of title in continuation to the individual portions into which land is subdivided into are triggered if Chap 1 of Pt 9 of the NLC comes into play. Chapter 1 of Pt 9 deals with applications for the sub-division of land but not the surrender thereof, which is dealt with in Pt 12. Section 197 as well as ss 204A to 204H are found in Pt 12. If that be the case, and if an application for surrender and re-alienation under s 204B attracts the application of the provisions of Chap 1 of Pt 9, an application for surrender and re-alienation under s 197/ s 42 must likewise attract the application of Chap 1 of Pt 9 (see p 421E–G).

(5) Even if the lands had been surrendered and re-alienated according to the procedure in ss 204B to 204G, the lands would have been re-alienated back to Ulu Behrang in different issued documents of title, each with its own number too. If, in those circumstances the Director was willing to recognize the power of attorney, there was no reason why he should not do so now. Further, the power of attorney as drafted was wide enough to refer to or include a reference to the sub-divisional lots arising from a subdivision of the lands (see p 422B–C).

[Bahasa Malaysia summary

Perayu telah menyempurnakan satu perjanjian untuk membeli dua bidang tanah daripada sebuah syarikat bernama Ulu Behrang Estate Sdn Bhd ('Ulu Behrang'). Perayu berhasrat untuk membangunkan tanah-tanah tersebut dengan membahagi dan menjualkan lot-lot berasingan kepada pembeli yang berminat. Ulu Behrang telah melaksanakan satu surat kuasa wakil yang menyebelahi perayu berhubung dengan tanah-tanah tersebut di mana perayu telah diberi kuasa dan mempunyai kuasa untuk, antara lain, memohon atau mengemukakan kepada pihak berkuasa yang berkaitan apa-apa penukaran, reka letak bangunan atau pembahagian tanah-tanah tersebut. Perayu juga telah diberi kuasa untuk menandatangani dan menyempurnakan apa-apa dokumen atau alat untuk pendaftaran bagi pindahmilik atau penyerahan hak apa-apa bahagian atau bahagian-bahagian tanah-tanah tersebut yang telah dibahagikan kepada pembeli-pembeli tersebut. Untuk mencapai objektif perayu untuk membahagikan tanah-tanah tersebut kepada lot-lot, Pengarah Tanah dan Galian ('Pengarah tersebut') telah mencadangkan agar perayu menyerah tanah-tanah tersebut kepada pihak berkuasa kerajaan menurut peruntukan s 197 Kanun Tanah Negara 1965 ('KTN') supaya tanah-tanah tersebut dikembalikan kepada pihak berkuasa kerajaan negeri sebagai tanah kerajaan negeri, di mana selepas itu, di dalam menjalankan kuasa yang diberikan di bawah s 42 KTN, pihak berkuasa kerajaan negeri akan memberihakmilik semula tanah-tanah tersebut kepada Ulu Behrang. Cadangan Pengarah tersebut terkandung di dalam sepucuk surat bertarikh 23 Januari 1996. Tanah-tanah tersebut telah diberihakmilik semula kepada Ulu Behrang dalam 1,146 bahagian lot masing-masing dengan dokumen hakmilik keluaran. Selepas itu, Pengarah tersebut telah memberitahu perayu bahawa memandangkan tanah-tanah tersebut telah diserahkan kepada pihak berkuasa kerajaan negeri, surat kuasa wakil yang diberikan kepada perayu tidak lagi kekal berkesan dan perayu dikehendaki untuk memberikan satu surat kuasa wakil baru yang disempurnakan oleh Ulu Behrang memberi kuasa kepada perayu untuk berurusan dengan 1,146 bahagian lot-lot tersebut. Adalah kes Pengarah tersebut di mana surat kuasa wakil yang diberikan kepada perayu adalah tidak berkesan berhubung dengan 1,146 bahagian lot-lot tersebut kerana prosedur yang digunakan untuk membahagikan tanah-tanah tersebut melalui satu penyerahan di bawah s 197 KTN dan selepas itu pemindahan semula kepada Ulu Behrang di bawah s 42 KTN; sementara, jika perayu telah menggunakan prosedur di bawah ss 204A hingga 204H KTN, surat kuasa wakil tersebut mungkin masih berkesan. Perayu telah membuat rayuan terhadap keputusan Pengarah tersebut.

Diputuskan, membenarkan rayuan tersebut:

(1) Tindakan Pengarah tersebut yang enggan untuk mengakui surat kuasa wakil tersebut dan menghendaki perayu untuk

mengemukakan kepada beliau dengan satu surat kuasa wakil baru membawa kepada satu keputusan. Ia merupakan satu keputusan di mana satu rayuan boleh dipohon. Mahkamah juga berpuas hati bahawa perayu adalah 'seorang yang terkilan' dengan keputusan tersebut (lihat ms 417F–G).

(2) Penyerahan tanah-tanah tersebut mungkin menimbulkan persoalan tentang keberkesanan surat kuasa wakil bertentangan dengan bahagian lot-lot tersebut tetapi surat kuasa wakil tersebut tidakpun 'tidak berkesan' sebagaimana didakwa dan hakikat bahawa tanah-tanah tersebut telah diserahkan tidak menjejaskan kedudukan perayu sebagai seorang yang terkilan dengan keputusan Pengarah tersebut kerana perayu tidak memohon untuk bergantung kepada surat kuasa wakil untuk menuntut kepentingan dalam tanah-tanah tersebut tetapi telah menegaskan bahawa surat kuasa wakil tersebut masih boleh di saman berhubung bahagian lot-lot tersebut (lihat ms 417H–418A).

(3) Secara umum, satu penyerahan tanah di bawah s 197 KTN, ia kembali menjadi tanah kerajaan negeri dan mungkin dilupuskan mengikut kehendak pihak berkuasa kerajaan negeri. Bagaimanapun, setiap kes mestilah diputuskan menurut fakta-fakta tertentu masing-masing. Di dalam kes ini, Pengarah tersebut telah membuat tawaran untuk memberimilik semula tanah-tanah tersebut kepada Ulu Behrang atas terma-terma dan syarat-syarat yang dinyatakan di dalam surat beliau bertarikh 23 Januari 1996 dan tawaran sedemikian telah diterima. Oleh itu, semasa penyerahan, walaupun tanah-tanah kerajaan negeri tersebut terletakhak dengan pihak berkuasa kerajaan negeri sebagai tanah kerajaan negeri, tanah-tanah tersebut tidak boleh dilupuskan mengikut kehendak tetapi hendaklah dianggap sebagai telah diluluskan untuk pemberimilikan semula bahagian lot-lot tersebut; satu kedudukan yang tidak beza daripada satu penyerahan di bawah ss 204B dan 204G KTN. Perbezaan satu penyerahan di bawah ss 197 dan 204G(2) KTN tidak ada apa-apa yang benar-benar ketara di dalam kes ini (lihat ms 420C–E, 421A).

(4) Peruntukan-peruntukan untuk keluaran hak milik sebagai sambungan kepada bahagian-bahagian individu dalam tanah yang telah dibahagikan akan tercetus jika Bab 1 Bahagian 9 KTN memainkan peranan. Bab 1 Bahagian 9 membicarakan tentang permohonan untuk pembahagian tanah tetapi bukan penyerahan, yang dibincangkan dalam Bahagian 12. Seksyen 197 dan juga ss 204A hingga 204H boleh didapati dalam Bahagian 12. Jika kes sedemikian, dan jika satu permohonan peruntukan-peruntukan Bab 1 Bahagian 9, satu permohonan untuk penyerahan dan pemberimilikan semula di bawah s 197/s 42 mestilah begitu juga menarik permohonan Bab 1 Bahagian 9 (lihat ms 421E–G).

(5) Walaupun tanah-tanah tersebut telah diserahkan dan diberimilik semula menurut prosedur dalam ss 204B hingga 204G, tanah-tanah tersebut akan diberimilik semula kepada Ulu Behrang dalam dokumen hakmilik keluaran yang lain, masing-masing dengan nombor-nombor sendiri. Jika, di dalam keadaan tersebut Pengarah tersebut sanggup mengakui surat kuasa wakil tersebut, tidak ada sebab kenapa beliau tidak patut berbuat sedemikian. Tambahan pula, surat kuasa wakil sebagaimana yang didrafkan adalah cukup luas untuk dirujuk kepada atau dimasukkan sebagai rujukan kepada bahgian lot-lot yang timbul daripada satu bahagian daripada tanah-tanah tersebut (lihat ms 422B–C).]

Notes

For cases on subdivision, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 3311–3316.

Cases referred to

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors; *Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123 (refd)

United Malayan Banking Corp Bhd v Pemungut Hasil Tanah, Kota Tinggi [1984] 2 MLJ 87 (refd)

Western Fish Products Ltd v Penwith District Council & Anor [1981] 2 All ER 204 (refd)

Legislation referred to

Contracts Act 1950

National Land Code 1965 ss 42, 197, 104A, 124, 157A, 204B, 204C, 204D, 204E, 204F, 204G(2), 292, 294, 297, 298, 299, 302(2), 303, 309(1), (2), 310, 311(b), 417, 418(2), Pt 9 Chaps 1, 3, Pt 10 Chap 3, Pt 11 Chap 3, Pt 12

Power of Attorney Act 1949

Wong Kian Kheong (*Andrew Chiew Ean Vooi* with him) (*Lee Hishammuddin Advocates*) for the appellant.

Mohamed Jazamuddin bin Hj Ahmad Nawawi (Attorney General's Chambers) for the respondent.

Clement Skinner J. :

This is an appeal against the decision of the director of lands and mines, Perak ('the director') refusing to recognize that a power of attorney granted in favour of Golden Approach Sdn Bhd ('the appellant') would enable the appellant, using that power of attorney, to deal with 1,146 sub-divisional lots of land hereinafter described. The facts giving rise to this appeal are these.

The appellant is a developer. On 18 May 1994, it entered into an agreement to purchase two parcels of land measuring in total some 2,000 acres from a company called Ulu Behrang Estate Sdn Bhd ('Ulu Behrang'). Those lands were held under titles PT 4020, QT No HS(D) BP 394 and PT 4021 QT No HS(D) BP 395 ('the said lands'). A

The appellant intended to develop the said lands by subdividing the same and selling off individual lots to interested purchasers in a project called 'Diamond Creeks Country Retreat'. It was therefore a term upon which the said lands were purchased that Ulu Behrang would grant to the appellant a power of attorney to facilitate the aforementioned purposes. Accordingly, on 18 May 1994, Ulu Behrang duly executed a power of attorney in favour of the appellant in respect of the said lands, in which the appellant was authorized and empowered to, inter alia, apply or submit to the relevant government authorities any conversion, layout, building, amalgamation or subdivision or other plans necessary for the development of the said lands. The appellant was also authorized to sign and execute any documents or instruments for the registration of the transfer or assignment of any part or subdivided portions of the said lands to its purchasers or nominees. B C D

The appellant initially hoped to achieve their objective of subdividing the said lands into lots by adopting a procedure provided under s 204D of the National Land Code 1965 ('NLC'), whereby the said lands would be surrendered to the state authority whereafter it would be immediately re-alienated to Ulu Behrang in sub-divisional lots. On 8 September 1995, the appellant through a firm of surveyors, submitted to the director an application for that purpose. However, as the said lands were held under qualified titles, that is, in respect of which a final survey had not been completed, the director proposed that the said lands be surrendered to the state authority according to the provisions of s 197 of the NLC so that the said lands reverted to the state authority as state land, whereafter, in the exercise of powers vested in it under s 42 of the NLC, the state authority would re-alienate the said lands to Ulu Behrang. I pause to mention here that although the term used in s 42 of the NLC is 'to alienate' state land, I use the word 're-alienate' because that is the word used by the director in his letter concerning the matter which I shall be referring to next. E F G

The director's proposal is contained in a letter dated 23 January 1996. That letter also set out several other terms and conditions upon which the director was prepared to accept a surrender of the said lands and thereafter to alienate them back to Ulu Behrang. The conditions as set out in the director's letter of 23 January 1996 were acceptable to the appellant and so, on 2 February 1996, the said lands were duly surrendered to the state authority and the documents of title thereto handed over to the director. Thereafter, the state authority, as promised, re-alienated the said lands back to Ulu Behrang in 1,146 sub-divisional lots each with their own issue document of title which are numbered as HS(D) 2689 to HS(D) 3835 inclusive. H I

It was with the issuance of the 1,146 individual titles to the sub-divisional lots that a dispute has arisen between the appellant and the

director. The appellant has sold off individual lots to purchasers and needs to have these lots transferred to them. Correspondence was entered into between the appellant's former solicitors and the director regarding the sub-divisional lots and the power of attorney granted to the appellant in respect of the said lands. In two letters written by the director dated 7 April 1999 and 6 May 1999, the director informed the appellant's former solicitors that as the said lands had been surrendered to the state authority as of 5 May 1996, the power of attorney granted to the appellant over the said lands ceased to remain effective in respect thereof. The director also informed the appellant that in so far as the 1,146 sub-divisional lots were concerned, the appellant was required to furnish a new power of attorney executed by Ulu Behrang authorizing the appellant to deal with them. It is against the above decision that the appellant brings this appeal.

When this appeal came on for hearing, En Mohamed Jazamuddin bin Hj Nawawi, learned senior federal counsel who appeared for the director, raised a preliminary objection. It was his submission that the appellant had no locus standi to bring this appeal because the appellant was not the registered proprietor of the said lands; therefore, when the said lands were surrendered and reverted to state land freed of all claims and interests etc, the power of attorney granted to the appellant had ceased to exist by reason whereof the appellant had no right to bring this appeal. I had dismissed the preliminary objection for the following reasons.

First, s 418 of the NLC describes who may bring an appeal and I was satisfied that the appellant was such a person. Subsection (1) of s 418 of the NLC provides that 'any person or body aggrieved by any decision … of the State Director … may … appeal therefrom to the court'; and sub-s (2) of s 418 of the NLC defines a 'decision' as including any act, omission, refusal, direction or order. To begin with, it was my view that when the director made known to the appellant his refusal to recognize the power of attorney as being good for the purposes of dealing with the 1,146 sub-divisional lots and that the appellant was required to furnish him with a fresh power of attorney in respect of those lots, that act of refusing amounted to a decision. It was a decision upon which an appeal would lie. I was also satisfied that the appellant was a 'person aggrieved' by that decision because the appellant, as the purchaser for value of the said lands, and the person to whom the power of attorney had been granted for the purposes stated therein, was directly and materially affected by the decision of the director.

Secondly, I did not agree with the submission of learned senior federal counsel that on a surrender of the said lands, the power of attorney had 'ceased to exist'. It did not. The surrender of the said lands may have given rise to questions about the effectiveness of the power of attorney vis-a-vis the sub-divisional lots, but the power of attorney did not 'cease to exist' as alleged; it remained very much on footing, especially between Ulu Behrang and the appellant, and, the fact that the said lands had been surrendered did not, in my view, affect the position of the appellant as a person aggrieved by the decision of the director because the appellant does not seek in this appeal to rely upon the power of attorney to claim an interest in the said

lands. All the appellant asserts is that the power of attorney can still be used in respect of the sub-divisional lots. With that, I turn to consider the substantive appeal.

In the arguments before me, the learned senior federal counsel submitted that the director was quite correct in the stand he has taken. It is the director's case that the power of attorney granted to the appellant is ineffective in respect of the 1,146 sub-divisional lots because the procedure adopted to subdivide the said lands was by way of a surrender under s 197 of the NLC, and thereafter alienation back to Ulu Behrang under s 42 of the NLC; whereas, if the appellant had adopted the procedure under ss 204A to 204H of the NLC, the power of attorney would still be effective. The reasons for the director's stand may be summarized as follows:

(i) Where land is surrendered pursuant to s 197of the NLC, it reverts and vests in the state authority as state land, freed of all interests and claims etc. As state land, the 'surrendered' land may be disposed off at will by the state authority under s 42 of the NLC, whereas land which is surrendered under s 204D of the NLC shall by virtue of s 204B of the NLC, be immediately re-alienated to the proprietor;

(ii) the process of land being surrendered and alienated back under s 42 of the NLC does not create a title in continuation;

(iii) although the said lands have been alienated back to Ulu Behrang, they now exist under 1,146 different issue documents of title, namely, HS(D) 2689 to HS(D) 3835 and therefore the power of attorney cannot be used in any manner whatsoever in relation to the new titles;

(iv) the appellant could have applied for conversion and subdivision under Pt 9 Chap 1 of the NLC. If they had done so, the lands would carry the same title, or alternatively, if a new title is issued, such a new title shall be in continuation of the original title by reason whereof the power of attorney would still be effective.

Those then are the reasons given by the director for his stand. The question that arises for determination in this appeal is whether those reasons are correct. Mr Wong Kian Kheong, counsel for the appellant, says the director is wrong and has sought to impugn the decision of the director on three grounds. He submitted that:

(a) the provisions of the NLC do not empower the director to decide on the validity of a power of attorney and as such the director could not make the decision he made;

(b) the words used in the power of attorney to confer authority on the appellant to deal with the said lands are wide enough to include a reference to the 1,146 sub-divisional lots and

(c) on the particular facts of this case, the director is estopped from making the decision he made.

With regard to the appellant's first contention, counsel for the appellant submitted that there are only three categories of provisions found in the NLC which involves the registrar in any way when a power of attorney is

used in conjunction with land. Those three categories are found in division IV of the NLC. According to counsel, the first category of provisions are to be found in ss 292, 294 and 309(1) and (2) of the NLC, and concern the use of a power of attorney in the registration of instruments of dealing in respect of land. The second category of provisions relate to the powers of the registrar where a power of attorney accompanies an instrument of dealing which requires to be registered, and those provisions are to be found in ss 297, 298, 299, 302 and 303 and perhaps 311 of the NLC. The third category is constituted by s 157A of the NLC which deals with an application by a donee of a power of attorney to the registrar. After referring to the wordings of these various sections and their scope, counsel for the appellant submitted that the powers conferred on the registrar are very narrow and do not extend to making a decision on the validity of the power of attorney or of requiring that a new power of attorney be executed in respect of the 1,146 sub-divisional lots. According to counsel, if at all, the registrar's duty to decide the fitness for registration of an instrument of dealing accompanied by a power of attorney under the second category of provisions is limited to making the enquiries mentioned in ss 302(2) and 311 of the NLC. Those enquiries are limited to enquiring whether a particular power of attorney is still in force (under s 311(b) of the NLC).

Counsel for the appellant emphasized that if an instrument is presented for registration, accompanied by a power of attorney or pursuant to a power of attorney, the provisions of ss 309 to 310 of the NLC are triggered, and these provisions do not empower the registrar to enquire into the validity of a power of attorney. Under the NLC, the registrar can suspend, reject or accept the instrument of dealing (whether accompanied or not accompanied by a power of attorney) but the registrar cannot decide that a power of attorney is valid or invalid and cannot require a fresh power of attorney to be produced. According to counsel, the question of the validity of a power of attorney is a question to be decided by reference to the Power of Attorney Act 1949, the Contracts Act 1950, the common law and the rules of equity. That is a question to be decided by a court and not by a registrar.

It is evident from the above submissions that the appellant regards the director as having made a decision on the validity of the power of attorney in question. With due respect to counsel for the appellant, I do not think it is the case of the director that the power of attorney granted to the appellant is invalid. In submissions, the learned senior federal counsel pointed out that the director does not challenge the validity of the power of attorney. I agree with that submission. It is quite evident that what the director has done is to state his stand on whether or not he regards the power of attorney, which was granted in respect of the said lands, to be still effective or applicable in respect of the 1,146 subdivisional lots, and to give his reasons for taking that stand. To decide the issue at hand, it is not necessary, in my view, to undertake a review of the powers of the registrar under the three categories of sections in the NLC. I think the issue is to be resolved by examining the consequences of the appellant having undertaken a

subdivision of the said lands by accepting the proposal of the director and adopting the procedure under ss 197 and 42 of the NLC, as opposed to ss 204B to 204G of the NLC to see if the reasons given by the director for his stand are correct or not, and if they are, whether the director is to be estopped from insisting on relying on that difference to support the stand he has taken.

With that, I turn to consider first whether the director was correct to take the view that because the said lands had been surrendered pursuant to s 197 of the NLC and had reverted to State land, they could be disposed of at will by the state authority under s 42 of the NLC, whereas if the said lands had been surrendered under s 204D of the NLC, they would, by virtue of s 204B of the NLC, be immediately re-alienated to the proprietor. I find that for the reasons hereafter stated, the director was not:

(a) while it is true that generally speaking on a surrender of land under s 197 of the NLC, it reverts to state land and may be disposed off at will by the state authority, each case must be decided according to its own particular facts. In this case, the director had offered to re-alienate the said lands back to Ulu Behrang on the terms and conditions set out in his letter of 23 January 1996, and such offer had been accepted. Therefore, on their surrender, although the said lands vested in the state authority as state land, they were not available for disposal at will as contended by learned senior federal counsel but had to be treated as being approved for re-alienation in sub-divisional lots: a position no different than a surrender under ss 204B and 204G of the NLC;

(b) learned senior federal counsel sought to impress upon me that on a surrender of land under s 197 of the NLC, it reverts to state land freed of all claims or interests etc and this fact made all the difference in this case. I regret to say that on the particular facts of this case, I did not find such fact was of any telling difference. It is true that on a surrender of land under s 197 of the NLC, it reverts to state land. But so does land surrendered under s 204G of the NLC. Under s 204G(2) of the NLC, the land reverts to and vests in the state authority as state land, and the issue document of title to the land shall be destroyed. The difference between a surrender of land for subdivision under ss 197 and 204G of the NLC seems to be this: on a surrender under s 204G(2) of the NLC, the land reverts to the state authority as state land but is to be treated as approved for re-alienation in sub-divisional lots on the terms indicated by the state authority under s 204E of the NLC, whereas under s 197 of the NLC, there is no such built-in 'treating' of the land as approved for re-alienation in sub-divisional lots. However, as I have pointed out earlier, because the director had offered to re-alienate the said lands to Ulu Behrang in sub-divisional lots upon their surrender on the terms indicated in his letter of 23 January 1996, and such offer had been accepted, the said lands were in fact to be treated as approved for re-alienation in sub-divisional lots on those terms on their surrender, and therefore the

difference in a surrender under ss 197 and 204G(2) of the NLC was of no real significance in this case.

I next consider whether the learned senior federal counsel was correct in his contention that when land is surrendered for subdivision under s 197 of the NLC and alienated back under s 42 of the NLC, the process did not create a title in continuation. Before I do so, I should point out that implicit in that contention is the proposition that where land is surrendered for subdivision and re-alienated under s 204B of the NLC, that process creates a title in continuation which will allow a power of attorney granted in respect of the surrendered lands to be still applicable in respect of the re-alienated sub-divisional lots. Learned senior federal counsel did not in submissions state the basis upon which that submission was made, and I have difficulty agreeing with it for the following reasons: in the first place, while a reading of ss 197 and 42 of the NLC show that neither section makes any mention of a title in continuation being issued in respect of land surrendered under s 197 of the NLC and alienated back under s 42 of the NLC; that same observation may be made about a surrender and approval for re-alienation under ss 204E and 204G of the NLC. Secondly, if as suggested by learned senior federal counsel, a sub-division exercise carried out under the procedures available under ss 204B to 204G of the NLC results in a title in continuation being issued to the sub-divisional lots, that continuation must arise as a result of the operation or application of other provisions of the NLC which deal with continuation of title. Those provisions are found in Ch 3 of Pt 10 and Ch 3 of Pt 11 of the NLC. It will be observed that these two chapters, which specifically provide for the issuance of title in continuation to the individual portions into which land is subdivided into (see ss 164 and 183 of the NLC), are triggered or brought into operation if Ch 1 of Pt 9 of the NLC comes into play. Chapter 1 of Pt 9 of the NLC deals with applications for the sub-division of land but not the surrender thereof. Surrender is dealt with in Pt 12 of the NLC and s 197 of the NLC as well as ss 204A to 204H of the NLC are found in Pt 12. If that be the case, and if an application for surrender and re-alienation under s 204B of the NLC attracts the application of the provisions of Ch 1 of Pt 9 of the NLC (which it must do, otherwise how else would Ch 3 of Pt 10 or 11 be brought into play to allow title in continuation to be issued to the sub-divisional lots), an application for surrender and re-alienation under s 197/ s 42 of the NLC must likewise attract the application of Ch 1 of Pt 9 of the NLC. I do appreciate, of course, that it may be argued that the provisions of Chs 1 and 3 of Pt 9 continue to apply to an application for surrender and re-alienation under s 204B because s 204A of the NLC expressly states that 'the provisions of this Part shall not be construed as affecting the continued operation of the provisions of s 124 and Chaps 1 and 3 of Part 9,' but I consider the words 'the provisions of this Part' as including a reference to a surrender under s 197of the NLC as well, it being found in Pt 12 too.

It follows from what I have said, when discussing this second ground of the director, that I must also reject the reasons relied on by him in his fourth

ground, namely, the appellant should have applied for sub-division under Ch 1 of Pt 9 of the NLC, so as to obtain title in continuation to the sub-divisional lots.

The third ground relied upon by the director for not recognizing the power of attorney was that the said lands have been re-alienated under different issue documents of title, each bearing its own number. I regret I cannot agree with the reasoning of the director because even if the said lands had been surrendered and re-alienated according to the procedure in ss 204B to 204G of the NLC, the said lands would have been re-alienated back to Ulu Behrang in different issue documents of title, each with its own number too. If, in those circumstances, the director is willing to recognize the power of attorney, I cannot see any good reason why he should not do so now. I also agree with counsel for the appellant that the power of attorney as drafted is wide enough to refer to or include a reference to the sub-divisional lots arising from a sub-division of the said lands. In particular, I refer to para 1(b) of the power of attorney which reads:

> 1 To execute, sign, initial, liaise and do any and all letters, documents, instruments or acts or things that are necessary on behalf of the donor for:
> (a) …,
> (b) the registration of the transfer or assignment of any part or subdivided portion of the said properties to the purchaser's purchaser or purchasers or his nominee or nominees; and …

Thus, even though the issue document of title to the 1,146 sub-divisional lots do not contain any reference to the said lands, the director is in possession of records which show that the said lands have been subdivided and re-alienated as the 1,146 sub-divisional lots.

The findings I have already arrived at should be sufficient to dispose of this appeal but for completeness, I move next to consider whether on the particular facts of this case, the director is estopped from denying the effectiveness of the power of attorney in respect of the 1,146 sub-divisional lots. Relying on the decision in *United Malayan Banking Corp Bhd v Pemungut Hasil Tanah, Kota Tinggi* [1984] 2 MLJ 87, learned senior federal counsel cautioned against importing the use of equitable principles in determining rights under our NLC which is based on the Torrens system. I do not think that what was said in that case would have any application to the facts of our case. The appellant is not, by the use of the doctrine of estoppel, trying to assert a right to or interest in land. The doctrine is also not being applied to get around the provisions of the NLC; the appellant seeks to apply the doctrine against the conduct of the director.

With regard to the application of the concept of equitable estoppel in the area of public law, the then Federal Court in *Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors*; *Lesco Development Corp Sdn Bhd v Yap Chong Lan & Ors* [1984] 2 MLJ 123, referred with approval to the decision in *Western Fish Products Ltd v Penwith District Council & Anor* [1981] 2 All ER 204 in which the English Court of Appeal held that an estoppel could not be raised to prevent a statutory body exercising its statutory discretion or performing its statutory duty but did recognize that

there were two kinds of exceptions to the principle that a public authority could not be estopped from exercising its duty and powers:

(a) where it had statutory power to delegate functions to its officers and there were special circumstances to justify a person dealing with that officer in thinking that the officer had power to bind the authority by an irrevocable decision; and

(b) where the authority waives a procedural requirement relating to some application made to it, whereupon it may be estopped from relying on the lack of formality.

The question for decision here is do either of these exceptions apply to the facts of our case? As regards the first exception, it clearly can have no application. As far as the second exception is concerned, I find that it also would not apply because in so far as the surrender and re-alienation of the said lands are concerned, the director has in fact done what he said he would do, and in doing so, it has not been shown that the director had conducted himself in such a manner as to suggest that he was going to waive any requirements in relation to the use of the power of attorney in relation to the 1,146 sub-divisional lots.There was in fact no discussion at all on the power of attorney so that it could be said that any form of estoppel had arisen.

Notwithstanding what I have said above, in the result I find that the appellant succeeds in this appeal. There remains the question of what order I should make to give effect to this decision. According to the director, he refuses to recognize the power of attorney in relation to the 1,146 sub-divisional lots because they are not titles in continuation and they bear no reference to the fact that they formerly formed part of the said lands. To give effect to this decision, I find that it would be most appropriate if I order, pursuant to the power vested in this court by s 417 of the NLC, that the director take such steps as may be necessary to endorse on the issue documents of title to the 1,146 sub-divisional lots a memorial to the effect that they were formerly part of the said lands or alternatively, that they are titles issued in continuation to that under which the said lands were held, and make the necessary indorsements on the issue documents of title to reflect such continuation.

I accordingly allow this appeal with costs to the appellant.

Appeal allowed.

Reported by Jafisah Jaafar